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9 **Attorneys for Defendant COUNTY OF IMPERIAL**

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 LANCE RICOTTA,) Case No.: 13 CV 1454 DMS WVG
15)
16 Plaintiff,) **ANSWER TO FIRST**
17 v.) **AMENDED COMPLAINT**
18)
19 COUNTY OF IMPERIAL, CA;)
20 DOES 1 to 20, Inclusive,)
21)
22 Defendants.)
23)
24)
25)

26 **GENERAL ALLEGATIONS**

27 1. Defendant admits the allegations of paragraph 1 of the
28 First Amended Complaint.

29 2. Defendant lacks sufficient information to admit or deny the
30 allegations of paragraph 2 of the First Amended Complaint, and on
31 that basis denies said allegations.

32 3. Defendant lacks sufficient information to admit or deny the

1 allegations of paragraph 3 of the First Amended Complaint, and on
2 that basis denies said allegations.

3 4. Defendant admits the allegations of paragraph 4 of the
4 First Amended Complaint.

5 5. Defendant lacks sufficient information to admit or deny the
6 allegations of paragraph 5 of the First Amended Complaint, and on
7 that basis denies said allegations.

8 6. Defendant denies the allegations of paragraph 6 of the First
9 Amended Complaint.

10 7. Defendant lacks sufficient information to admit or deny the
11 first paragraph 7 of the First Amended Complaint, and on that basis
12 denies said allegations. Defendant denies each and every one of the
13 remaining allegations of paragraph 7 of the First Amended Complaint.

14 8. Defendant denies the allegations of paragraph 8 of the First
15 Amended Complaint.

16 9. Defendant denies the allegations of paragraph 9 of the First
17 Amended Complaint.

18 10. Defendant denies the allegations of paragraph 10 of the
19 First Amended Complaint.

20 11. Defendant denies the allegations of paragraph 11 of the
21 First Amended Complaint.

22 12. Defendant denies the allegations of paragraph 12 of the
23 First Amended Complaint.

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1 **FIRST CAUSE OF ACTION**
2 **(VIOLATION OF CIVIL RIGHTS)**

3 13. Defendant incorporates by reference all preceding
4 paragraphs of this Answer as though set forth fully herein.

5 14. Defendant denies the allegations of paragraph 14 of the
6 First Amended Complaint.

7 15. Defendant denies the allegations of paragraph 15 of the
8 First Amended Complaint.

9 16. Defendant denies the allegations of paragraph 16 of the
10 First Amended Complaint.

11 17. Defendant denies the allegations of paragraph 17 of the
12 First Amended Complaint.

13 **SECOND CAUSE OF ACTION**
14 **(CONSPIRACY TO VIOLATE CONSTITUTIONAL RIGHTS)**

15 18. Defendant incorporates by reference all preceding
16 paragraphs of this Answer as though set forth fully herein.

17 19. Defendant denies the allegations of paragraph 19 of the
18 First Amended Complaint.

19 20. Defendant denies the allegations of paragraph 20 of the
20 First Amended Complaint.

21 21. Defendant denies the allegations of paragraph 21 of the
22 First Amended Complaint.

23 **AFFIRMATIVE DEFENSES**
24 **FIRST AFFIRMATIVE DEFENSE**

25 As a First Affirmative Defense, defendant asserts the First

1 Amended Complaint, and every purported cause of action in the First
2 Amended Complaint, fails to state a claim upon which relief can be
3 granted.

4 **SECOND AFFIRMATIVE DEFENSE**

5 As a Second Affirmative Defense, defendant asserts that plaintiff
6 has failed to allege or establish the violation of any clearly established
7 constitutional rights of plaintiff and therefore plaintiff fails to state
8 any cause of action against this answering defendant.

9 **THIRD AFFIRMATIVE DEFENSE**

10 As a Third Affirmative Defense, defendant asserts that plaintiff
11 has failed to allege or establish any deprivation of a constitutionally
12 protected liberty interest of plaintiff.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 As a Fourth Affirmative Defense, defendant asserts that
15 plaintiff's claims are barred by the statute of limitations.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 As a Fifth Affirmative Defense, defendant asserts that plaintiff's
18 claims are barred by Doctrine of Qualified Governmental Immunity.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 As a Sixth Affirmative Defense, defendant, and each of its
21 agents, employees and representatives had probable cause to detain
22 and/or arrest plaintiff.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 As a Seventh Affirmative Defense, defendant County of Imperial
25 cannot be held liable for the actions of individual employees under 42

1 U.S.C. § 1983 or 42 U.S.C. §1985 based on a theory of *respondeat*
 2 *superior*. See *Monell v. Department of Social Services of the City of New*
 3 *York*, 436 U.S. 658, 691 (1978).

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 As an Eighth Affirmative Defense, defendant asserts that at all
 6 times alleged in the First Amended Complaint, the County of Imperial
 7 and its employees, agents and representatives acted in good faith,
 8 without malice and within the scope of the duties of law enforcement
 9 officers of the defendant public entity.

10 **NINTH AFFIRMATIVE DEFENSE**

11 As a Ninth Affirmative Defense, defendant asserts any damages
 12 incurred by plaintiff were directly and proximately caused or
 13 contributed to by plaintiff's own actions.

14 **TENTH AFFIRMATIVE DEFENSE**

15 As a Tenth Affirmative Defense, defendant alleges that if it is
 16 held liable for damages to plaintiff or any other party in any amount
 17 that defendant is only severally liable in an amount equal to its
 18 apportioned share of liability for any damages suffered by the plaintiff
 19 or any other party. The fault, if any, of defendant should be compared
 20 with the fault of other defendants or third parties and damages, if any,
 21 should be apportioned among the defendants or other parties in direct
 22 relation to each defendant's or party's comparative fault. Defendant
 23 should be obligated to pay only such damages, if any, which are
 24 directly attributable to its percentage of comparative fault. To require
 25 defendant to pay any more than its percentage of comparative fault

1 violates equal protection and due process clauses of the Constitution of
2 the United States and the Constitution of the State of California.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 As an Eleventh Affirmative Defense, defendant allege that plaintiff,
5 has failed to exercise reasonable care and diligence to avoid loss and to
6 minimize damages and that, therefore, plaintiff may not recover for
7 losses which could have been prevented by reasonable efforts on his
8 part or by expenditures which might reasonably have been made, and,
9 therefore, plaintiff's recovery, if any, should be reduced by the failure
10 to mitigate damages, if any there be.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 As a Twelfth Affirmative Defense, plaintiff herein is barred from
13 any recovery from any defendant herein for any loss, injury, or damage
14 resulting from any force either actually employed or about which
15 defendant warned, in that any and all such force was legal, proper,
16 justified, and necessary both for the self-defense and protection of each
17 of the named defendants herein or its/their employees, agents and/or
18 representatives and/or other individuals and also in order to overcome
19 plaintiff's unlawful, and dangerous attempts to resist a lawful
20 detention and/or arrest.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 As a Thirteenth Affirmative Defense, this answering defendant is
23 informed and believes, and thereon alleges, that certain additional
24 affirmative defenses are available to it. Said affirmative defenses will
25 require additional discovery or investigation before they can be
properly alleged. This answering defendant will move to amend its

1 Answer to the First Amended Complaint to allege such affirmative
2 defenses once it has been fully ascertained and can be properly
3 pleaded. Such affirmative defenses are not being brought at this time
4 for such reasons.

5 **WHEREFORE**, defendant prays for judgment as follows:

- 6 (1) That plaintiff take nothing by way of his First Amended
7 Complaint;
8 (2) For costs of suit;
9 (3) For attorney's fees and other expenses;
10 (4) For such other and further relief as the court deems just
11 and proper.

12
13 **McCORMICK & MITCHELL**

14 /s/ John P. McCormick

15 DATE: October 28, 2013

16 _____
17 John P. McCormick
18 Konrad M. Rasmussen
19 Nicole Barvie
20 Attorneys for Defendant
21 COUNTY OF IMPERIAL
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